U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

45

Date: DEC 07 2012 Office: SANTA ANA, CA FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ellen C. Johnson

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santa Ana, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Vietnam who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry into the United States by fraud or willful misrepresentation in April 2008. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

In a decision dated, April 1, 2011, the field office director found that the applicant had failed to establish that extreme hardship would be imposed on her spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly.

On appeal, counsel states that the applicant did establish that her spouse would suffer extreme hardship as a result of her inadmissibility.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

In April 2008, the applicant applied for a nonimmigrant visa to the United States. On her visa application, dated April 14, 2008, the applicant stated that she was married, was planning to visit a cousin in the United States, and that she did not have any siblings in the United States. The record establishes that these statements were all misrepresentations as the applicant was no longer married at the time of her visa application, having been divorced from her first husband since August 7, 2006, and that the applicant was traveling to the United States to visit her sister. On April 24, 2008, the applicant entered the United States as a nonimmigrant visitor and on January 28, 2010, she married a U.S. citizen. On July 22, 2010, the applicant stated in a sworn statement taken during her adjustment interview that when she entered the United States in April 2008 her intention was to stay in the United States and marry. She also stated that she did not own a furniture factory at the time, but did own shrimp farming and agricultural machinery businesses.

Based on the sworn statement taken from the applicant on July 22, 2010, we find that the applicant misrepresented her immigrant intent when she entered the United States in 2008, making her inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. In addition, the applicant's conduct during the application process for her nonimmigrant visa makes her inadmissible under section 212(a)(6)(C)(i) of the Act.

According to the Department of State's Foreign Affairs Manual, a misrepresentation is material if either: (1) The alien is excludable on the true facts; or (2) The misrepresentation tends to shut off a line of inquiry that is relevant to the alien's eligibility and that might well have resulted in a proper determination that he be excluded. *9 FAM 40.63 N61.*

The Department of State Foreign Affairs Manual also states:

> With limited exceptions, all visa applicants are presumed to be immigrants (and thus not eligible for a nonimmigrant visa (NIV)) unless and until they satisfy you that they qualify for one of the NIV categories defined in INA Section 101(a)(15). Per Section 291 of the INA, the *burden of proof* is at all times on the applicant, which means the applicant must convince you that he or she is entitled to the requested visa. Otherwise, the alien must be considered to be an applicant for immigrant status and cannot receive an NIV.

DOS Foreign Affairs Manual, § 40.7 N1.1

The Department of State Foreign Affairs Manual also states:

> (1) In determining whether visa applicants are entitled to temporary visitor classification, the consular officer must assess whether the applicants:
>
> > (a) Have a residence in a foreign country, which they do not intend to abandon;
> >
> > (b) Intend to enter the United States for a period of specifically limited duration; and
> >
> > (c) Seek admission for the sole purpose of engaging in legitimate activities relating to business or pleasure.
>
> (2) If an applicant for a B1/B2 visa fails to meet one or more of the above criteria, you must refuse the applicant under section 214(b) of the INA.

DOS Foreign Affairs Manual, § 41.31 N1.

On her nonimmigrant visa application the applicant indicated that she was married, was co-owner of a furniture factory in Vietnam, and had no siblings living in the United States. Again, the applicant was not married at the time of her application and the electrical engineer she was visiting was her sister, not her cousin.

Based on the current record, the AAO finds that the applicant's misrepresentations during her visa interview were material and make her inadmissible under section 212(a)(6)(C)(i) of the Act as they

shut off a line of inquiry that was relevant to her eligibility and that might have resulted in a proper determination that she be excluded. Inadmissibility under section 212(a)(6)(C)(i) of the Act can be waiver under section 212(i) of the Act.

Section 212(i) of the Act provides, in pertinent part:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22

I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The record of hardship includes: counsel's brief, medical documents, financial documents, an affidavit from the applicant, and an affidavit from the applicant's spouse.

The applicant's spouse is claiming extreme emotional and financial hardship if he is separated from the applicant. He claims that he is experiencing high levels of stress, extreme anxiety, and headaches as a result of the applicant's immigration problems. The applicant's spouse is claiming that he will suffer extreme emotional, physical, and financial hardship as a result of relocation because he would have to leave his two daughters who are attending college in California, he will not be able to find a job, and his health will be at risk given his age, the stress levels the relocation will cause, and inadequate health care in Vietnam.

The record indicates that the applicant's spouse is a 58 year old man who recently moved to New York City from California to work as a parking attendant. He has two daughters in college in California and suffers from allergies. The applicant's spouse submits documentation showing that she and her spouse share a life insurance policy and an auto insurance policy. The record also indicates that the applicant's spouse was scheduled for surgery on May 26, 2011, but nothing in the

record indicates what kind of surgery. Without more information about the applicant's spouse's surgery, we cannot ascertain the effects it would have on this application. The record also indicates, through the applicant's own statements in 2008, that she, along with her former husband and children, own a furniture production company in Vietnam. Counsel asserts that the applicant is no longer an owner in this furniture company because all ownership went to her daughter. He provides no documentation to support this assertion. Moreover, none of the documentation supports the applicant's spouse's assertions regarding extreme hardship. The financial documentation submitted shows very little economic ties to the United States and the applicant's spouse's recent move to New York City, away from his two daughters in California, would indicate that being distanced from them would not cause extreme hardship. The record contains no documentation to show that the applicant's spouse has a close relationship with his daughters. Counsel has also failed to submit supporting documentation regarding the condition of the employment market and health care in Vietnam, the ownership of the applicant's family's furniture production company, or the emotional and/or financial hardship the applicant's spouse would suffer as a result of separation.

The assertions of the applicant and her spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions cannot be given great weight. *See Matter of Kwan,* 14 I&N Dec. 175, 177 (BIA 1972) ("Information contained in an affidavit should not be disregarded simply because it appears to be hearsay. In administrative proceedings, that fact merely affects the weight to be afforded [it] . . . ."). Going on record without supporting evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Therefore, the AAO finds that the applicant has not established that her U.S. citizen spouse will suffer extreme hardship as a result of the applicant's inadmissibility.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.